
**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 12th September, 2017

Present:

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| Shri M.K. Shankaralinge Gowda | .. | Chairman |
| Shri H.D. Arun Kumar | .. | Member |
| Shri D.B. Manival Raju | .. | Member |

OP No.94/ 2017

BETWEEN:

Krishi Sunpower Power Private Limited,
29/2, K.H. Road,
Bengaluru - 560 027.

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PETITIONER

[Petitioner is represented by Dua Associates, Advocates]

AND:

- 1) The Managing Director,
Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.

- 2) The Managing Director,
Karnataka Renewable Energy Development Limited,
No.39, "SHANTHIGRUHA"
Bharath Scouts & Guides Building,
Opp. The Chief Post Master General's Office,
Palace Road,
Bengaluru – 560 001.

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RESPONDENTS

*[Respondent- 1 is represented by Indus Law, Advocates,
Respondent- 2 is represented by Shri G.S. Kannur, Advocate]*

ORDERS

- 1) In the above Petition, the point that would arise for our consideration is:

Whether the condition imposed by the 2nd Respondent – Karnataka Renewable Energy Development Limited (KREDL), in its letter dated 1.7.2016 (produced at ANNEXURE-A to the Petition), directing that, 'the Commercial Operation Date (COD) of the Project shall be within 12 (twelve) months from 29.6.2016', instead of the usual term of 12 (twelve) months from the date of approval of the Power Purchase Agreement (PPA) by the Commission, is valid or not.
- 2) In all other similar cases, the PPAs concerned contained a term that, the COD of the Project should be achieved within 12 (twelve) months from the 'Effective Date', which has defined therein as the 'date of approval of the PPA by the Commission'.
- 3) In the present case, the Petitioner on 2.6.2016 has acknowledged the receipt of the Letter of Award (LoA) dated 30.5.2016. Therefore, as per the terms and conditions of the Request for Proposal (RFP) and the LoA, the Petitioner was required to execute the PPA within 30 (thirty) days from 2.6.2016.
- 4) However, the Petitioner, by letter dated 24.6.2016, requested for further extension of time, for 21 days from 24.6.2016, for executing the PPA, for the reasons stated in the said letter. The 2nd Respondent (KREDL) allowed the Petitioner's request, subject to the condition that, the

COD of the Project should be achieved within '12 (twelve) months from 29.6.2016'. Therefore, the PPA should have been executed on or before 15.7.2016. It is seen that, the Petitioner has executed the PPA in question on 14.7.2016. By letter dated 7.10.2016, the approval of the PPA was communicated by this Commission, subject to effecting certain corrections / modifications to the PPA.

- 5) In the present Petition, the Petitioner has contended that, the condition imposed by the 2nd Respondent (KREDL), as per its letter dated 1.7.2016, curtailing the period for achieving the COD of the Project, is illegal and without jurisdiction.
- 6) A similar controversy had been considered by this Commission in some other cases, and it was held in those cases that, the 2nd Respondent (KREDL), while granting the extension of time for execution of the PPAs, had no power to curtail the period for achieving the COD.
- 7) In RP No.14/2016 and the connected cases, decided on 27.4.2017, after considering the different clauses of the Request for Proposal (RFP), this Commission has held that, the 2nd Respondent (KREDL) could extend the time for execution of the PPA as provided in the RFP, but could not restrict the period for achieving the Scheduled Date of Commissioning. The reason stated in RP No.14/2016 and the connected cases, in this regard, read thus:

“None of the provisions in the RFP provides for imposing any condition while extending the time for acknowledging the receipt of the LoA beyond seven days of the receipt of the LoA or while extending the time for execution of the PPA. When there is no such power for imposing any condition while extending the time for execution of the PPA, we are of the considered view that, the 2nd Respondent (KREDL) cannot unilaterally impose a condition altering the meaning of the ‘Effective Date’ to the disadvantage of the Solar Project Developer. The power conferred on the 2nd Respondent (KREDL) for extension of time under the RFP cannot be construed to include the power to impose any disadvantageous conditions on the Solar Project Developers. There should be a specific provision in the RFP itself, for this purpose. It cannot be disputed that, the time can be extended only for valid reasons made out by the Developers. Therefore, it was within the discretion of the 2nd Respondent (KREDL) to extend or not to extend the time, depending on the facts and circumstances of each case. However, the 2nd Respondent (KREDL) is not legally authorized to impose any condition unilaterally to the disadvantage of the Solar Project Developer.”

- 8) Therefore, as held by this Commission in RP No.14/2016 and other connected cases, in the present case also, the curtailment of the period for achieving the COD, as directed by the 2nd Respondent (KREDL), is to be set aside.

9) For the foregoing reasons, we pass the following :

ORDER

- (1) The letter dated 1.7.2016 of the 2nd Respondent (KREDL), insofar as it relates to the curtailment of the period for achieving the Commercial Operation of the Project, is set aside; and,
- (2) Consequently, the direction given by this Commission, by letter dated 7.10.2016, insofar as it relates to amending Articles 3.1, 8.5 and 21.1 of the PPA dated 14.7.2016, stands withdrawn and the said Articles shall remain as they were, originally.

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| Sd/- | Sd/- | Sd/- |
| (M.K. SHANKARALINGE GOWDA) | (H.D. ARUN KUMAR) | (D.B. MANIVAL RAJU) |
| CHAIRMAN | MEMBER | MEMBER |